

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jun 27, 2022

SEAN F. MCAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JULIANNA S.,¹

Plaintiff,

v.

KILOLO KIJAKAZI, Acting
Commissioner of Social Security,

Defendant.

No. 4:21-cv-5121-EFS

**ORDER GRANTING PLAINTIFF'S
SUMMARY-JUDGMENT MOTION,
DENYING DEFENDANT'S
SUMMARY-JUDGMENT MOTION,
AND REMANDING FOR PAYMENT
OF BENEFITS**

Plaintiff Julianna S. appeals the denial of benefits by the Administrative Law Judge (ALJ). For the reasons stated below, the ALJ erred when weighing the medical opinions and evidence. Because the evidence clearly supports a finding of disability, the Court remands for payment of benefits.

¹ To protect the privacy of the each social-security plaintiff, the Court refers to them by first name and last initial or as "Plaintiff." See LCivR 5.2(c).

I. Five-Step Disability Determination

A five-step sequential evaluation process is used to determine whether an adult claimant is disabled.² Step one assesses whether the claimant is engaged in substantial gainful activity.³ If the claimant is engaged in substantial gainful activity, benefits are denied.⁴ If not, the disability evaluation proceeds to step two.⁵

Step two assesses whether the claimant has a medically severe impairment or combination of impairments that significantly limit the claimant's physical or mental ability to do basic work activities.⁶ If the claimant does not, benefits are denied.⁷ If the claimant does, the disability evaluation proceeds to step three.⁸

Step three compares the claimant's impairment or combination of impairments to several recognized by the Commissioner as so severe as to preclude substantial gainful activity.⁹ If an impairment or combination of impairments

² 20 C.F.R. § 416.920(a).

³ *Id.* § 416.920(a)(4)(i).

⁴ *Id.* § 416.920(b).

⁵ *Id.*

⁶ *Id.* § 416.920(a)(4)(ii).

⁷ *Id.* § 416.920(c).

⁸ *Id.*

⁹ *Id.* § 416.920(a)(4)(iii).

1 meets or equals one of the listed impairments, the claimant is conclusively
2 presumed to be disabled.¹⁰ If not, the disability evaluation proceeds to step four.

3 Step four assesses whether an impairment prevents the claimant from
4 performing work she performed in the past by determining the claimant's residual
5 functional capacity (RFC).¹¹ If the claimant can perform past work, benefits are
6 denied.¹² If not, the disability evaluation proceeds to step five.

7 Step five assesses whether the claimant can perform other substantial
8 gainful work—work that exists in significant numbers in the national economy—
9 considering the claimant's RFC, age, education, and work experience.¹³ If so,
10 benefits are denied. If not, benefits are granted.¹⁴

11 The claimant has the initial burden of establishing she is entitled to
12 disability benefits under steps one through four.¹⁵ At step five, the burden shifts to
13 the Commissioner to show the claimant is not entitled to benefits.¹⁶

14
15
16 ¹⁰ 20 C.F.R. § 416.920(d).

17 ¹¹ *Id.* § 416.920(a)(4)(iv).

18 ¹² *Id.*

19 ¹³ *Id.* § 416.920(a)(4)(v); *Kail v. Heckler*, 722 F.2d 1496, 1497–98 (9th Cir. 1984).

20 ¹⁴ 20 C.F.R. § 416.920(g).

21 ¹⁵ *Parra v. Astrue*, 481 F.3d 742, 746 (9th Cir. 2007).

22 ¹⁶ *Id.*

1 If there is medical evidence of drug or alcohol addiction, the ALJ must then
 2 determine whether drug or alcohol use is a material factor contributing to the
 3 disability.¹⁷ If the remaining limitations without drug or alcohol use would not be
 4 disabling, disability benefits are not awarded.¹⁸

5 **II. Factual and Procedural Summary**

6 On February 1, 2017, Plaintiff filed a Title 16 application.¹⁹ Her disability
 7 claim was denied initially and on reconsideration.²⁰ An administrative hearing was
 8 held before ALJ Marie Palachuk, who took testimony from Marian Martin, Ph.D.,
 9 who was the testifying medical expert, and from Plaintiff about her conditions and
 10 symptoms.²¹ After the hearing, the ALJ issued a decision denying Plaintiff's
 11 disability application.²² Plaintiff sought review by the Appeals Council, which
 12 remanded the matter back to the ALJ to consider the report prepared by Philip
 13
 14
 15

16 ¹⁷ 20 C.F.R. § 416.935(a).

17 ¹⁸ 42 U.S.C. § 423(d)(2)(C); 20 C.F.R. § 416.935; *Sousa v. Callahan*, 143 F.3d 1240,
 18 1245 (9th Cir. 1998).

19 ¹⁹ AR 278–83.

20 ²⁰ AR 150–53, 159–65.

21 ²¹ AR 49–83.

22 ²² AR 124–43.

1 Barnard, Ph.D., to reconsider the nonmedical opinion of John Robinson, Ph.D., and
2 to obtain additional evidence.²³

3 On remand, the ALJ conducted a telephonic hearing and took additional
4 testimony from Plaintiff about her conditions and symptoms.²⁴ The ALJ again
5 denied Plaintiff's disability application, finding:

- 6 • Step one: Plaintiff had not engaged in substantial gainful activity
7 since January 23, 2017, the application date.
- 8 • Step two: Plaintiff had the following medically determinable severe
9 impairments: depression, anxiety, marijuana dependence, chronic
10 back pain/degenerative disc disease, and right hip labral tear (status
11 post arthroscopic repair surgery).
- 12 • Step three: Plaintiff did not have an impairment or combination of
13 impairments that met or medically equaled the severity of one of the
14 listed impairments.
- 15 • RFC: Plaintiff had the RFC to perform light work with the following
16 psychological limitations:

17 She is able to understand, remember, and carry out simple,
18 routine, repetitive tasks and instructions. She is able to
19 maintain concentration, persistence, and pace on simple,
20 routine tasks for two-hour intervals between regularly
scheduled breaks. She needs to be in a predictable
environment with seldom changes, no exercise of judgment,

21 ²³ AR 144–49.

22 ²⁴ AR 84–95.

no fast-paced production rate of pace, no public interactions, and no more than superficial interactions with coworkers (defined as non-collaborative/no teamwork). She needs to be dealing with things rather than people.

- Step four: Plaintiff had no past relevant work.
- Step five: considering Plaintiff's RFC, age, education, and work history, Plaintiff could perform work that existed in significant numbers in the national economy, such as garment sorter and cannery worker.²⁵

In reaching her decision, the ALJ gave:

- significant weight to the reviewing opinions of Marian Martin, Ph.D., and Andrew Forsyth, Ph.D.
- little or limited weight to the reviewing opinions of John Robinson, Ph.D., JD Fitterer, M.D., and Aaron Burdge, Ph.D.; the examining opinions of N.K. Marks, Ph.D., Philip Barnard, Ph.D., and David Morgan, Ph.D.; and the treating opinions of Julie Raekes, M.D., and Heather Ramirez, MSW.²⁶

The ALJ also found Plaintiff's medically determinable impairments could reasonably be expected to cause some of the alleged symptoms, but her statements concerning the intensity, persistence, and limiting effects of those symptoms were

²⁵ AR 13–38.

²⁶ AR 26–29.

1 inconsistent with the medical evidence and other evidence.²⁷ And the ALJ gave
 2 some weight to Plaintiff's mother's lay statements.²⁸

3 Plaintiff requested review of the ALJ's second decision by the Appeals
 4 Council, which denied review.²⁹ Plaintiff timely appealed to the Court.

5 **III. Standard of Review**

6 A district court's review of the Commissioner's final decision is limited.³⁰ The
 7 Commissioner's decision is set aside "only if it is not supported by substantial
 8 evidence or is based on legal error."³¹ Substantial evidence is "more than a mere
 9 scintilla but less than a preponderance; it is such relevant evidence as a reasonable
 10 mind might accept as adequate to support a conclusion."³² Moreover, because it is
 11 the role of the ALJ—and not the Court—to weigh conflicting evidence, the Court
 12 upholds the ALJ's findings "if they are supported by inferences reasonably drawn
 13 from the [entire] record."³³

14
 15 ²⁷ AR 24–26.

16 ²⁸ AR 29.

17 ²⁹ AR 1–6.

18 ³⁰ 42 U.S.C. § 405(g).

19 ³¹ *Hill v. Astrue*, 698 F.3d 1153, 1158 (9th Cir. 2012).

20 ³² *Id.* at 1159 (quoting *Sandgathe v. Chater*, 108 F.3d 978, 980 (9th Cir. 1997)).

21 ³³ *Molina v. Astrue*, 674 F.3d 1104, 1111 (9th Cir. 2012); *Lingenfelter v. Astrue*, 504
 22 F.3d 1028, 1035 (9th Cir. 2007) (requiring the court to weigh "both the evidence
 23

Further, the Court may not reverse an ALJ decision due to a harmless error.³⁴ An error is harmless “where it is inconsequential to the ultimate nondisability determination.”³⁵

IV. Analysis

A. Medical Opinions: Plaintiff establishes consequential error.

Plaintiff argues the ALJ erred by rejecting the opinions of the treating medical professionals Dr. Raekes and Ms. Ramirez. As discussed below, the Court agrees.³⁶

1. Standard

When Plaintiff filed her disability application, medical opinions were assessed depending on the nature of the medical relationship the claimant had with the medical provider. For instance, a treating physician’s or evaluating physician’s opinion may be rejected only for “clear and convincing” reasons if it is not contradicted by another physician’s opinion, or if it is contradicted by another _____ that supports and the evidence that detracts” from the ALJ’s decision) (cleaned up); *Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998).

³⁴ *Molina*, 674 F.3d at 1111.

³⁵ *Id.* at 1115 (cleaned up).

³⁶ Because the ALJ’s decision to afford little weight to Dr. Reakes’ and Ms. Ramirez’s opinions is not supported by substantial evidence and this error is consequential, the Court need not address Plaintiff’s remaining arguments.

1 physician’s opinion, it may be rejected for “specific and legitimate reasons”
 2 supported by substantial evidence.³⁷ A reviewing physician’s opinion may be
 3 rejected for specific and legitimate reasons supported by substantial evidence, and
 4 the opinion of an “other” medical source may be rejected for specific and germane
 5 reasons supported by substantial evidence.³⁸

6 2. Dr. Raekes

7 Since at least 2016, Plaintiff has been treated by Dr. Raekes on about a
 8 monthly basis. Dr. Raekes completed three medical opinions, two in June 2019 (a
 9 Medical Report and a Physical Functional Evaluation) and the other in January
 10 2021 (a Medical Report), which included very limiting work restrictions.³⁹ The ALJ
 11 gave little weight to these opinions.⁴⁰

12 Because Dr. Raekes’ limiting work restrictions were contradicted by
 13 Dr. Fitterer’s opinion that Plaintiff had no severe physical limitations and
 14

17 ³⁷ *Id.*; *Lester v. Chater*, 81 F.3d 821, 830–31 (9th Cir. 1995).

18 ³⁸ *Molina*, 674 F.3d at 1111. The opinion of a reviewing physician serves as
 19 substantial evidence if it is supported by other independent evidence in the record.
 20 *Andrews v. Shalala*, 53 F.3d 1035, 1041 (9th Cir. 1995).

21 ³⁹ AR 1368–73, 1564–66.

22 ⁴⁰ AR 28.

1 Dr. Martin's more mild non-exertional work restrictions, the ALJ was required to
2 provide specific and legitimate reasons for discounting Dr. Raekes' opinions.⁴¹

3 The ALJ stated that she discounted Dr. Raekes' 2019 opinions because they
4 were contradictory and were not supported by the objective medical evidence.

5 *a. The 2019 opinions were consistent*

6 First, the ALJ discounted Dr. Raekes' 2019 opinions because they were
7 contradictory—and extreme—opinions. An ALJ may discount a medical opinion if
8 it is internally inconsistent or inconsistent with the physician's own medical
9 notes.⁴² Here, Dr. Raekes' 2019 Physical Functional Evaluation opinion said that
10 Plaintiff could sustain sedentary work and that she would be off task for 30% of the
11 workday, while the 2019 Medical Report opinion limited Plaintiff to not lifting
12 objects that weighed two pounds and no standing or walking, i.e., she was
13 "Severely limited."⁴³ The ALJ accurately summarized Dr. Raekes' opined
14 limitations but these opined limitations are not inconsistent with each other when
15 read in the context of each form's specific questions.

16 For instance, as to the first purported inconsistency between being able to
17 perform sedentary work *and* being off task for more than 30% of the workday,

18
19 ⁴¹ See *Molina*, 674 F.3d at 1111.

20 ⁴² 20 C.F.R. 416.927(c)(3), (4). See *Buck v. Berryhill*, 869 F.3d 1040, 1050 (9th Cir.
21 2017).

22 ⁴³ AR 1368–73.

1 these questions pertain to two different abilities: Plaintiff's exertional and non-
2 exertional abilities. Dr. Raekes' sedentary-work opinion was based solely on
3 Plaintiff's exertional abilities while the off-task question required Dr. Raekes to
4 consider Plaintiff's ability to remain on task during a 40-hour workweek "[b]ased
5 on the cumulative effect of all limitations."⁴⁴ The off-task question required
6 Dr. Raekes to consider *all* of Plaintiff's limitations—both exertional and non-
7 exertional. It was therefore not inconsistent for Dr. Raekes to opine that Plaintiff
8 could physically perform sedentary work but be off task for more than 30% of her
9 workday when considering her anxiety, pain symptoms, and other mental health
10 symptoms.⁴⁵

11 As to the second purported inconsistency, the Physical Functional
12 Evaluation and the Medical Report forms defined light work, sedentary work, and
13 severely limited differently. The Medical Report⁴⁶ stated:

14
15
16 ⁴⁴ AR 1370.

17 ⁴⁵ See *Lester*, 81 F.3d at 829–30 (noting that, for claimant with chronic pain
18 syndrome and affective disorder, the consequences of the physical and mental
19 impairments were inextricably linked and the Commissioner "erred as a matter of
20 law in isolating the effects of [the claimant's] physical impairment from the effects
21 of his mental impairment").

22 ⁴⁶ AR 1369.
23

1 — Light work: Can lift 20 pounds maximum and frequently lift and/or carry up to
2 10 pounds. Even though the weight lifted may be negligible, light work may
3 require frequent walking or standing, or involves sitting most of the time with
4 occasional pushing and pulling of arm and/or leg controls.

5 — Sedentary work: Can lift 10 pounds maximum and frequently lift and/or carry
6 articles such as dockets, ledgers, and small tools. Although a sedentary job
7 involves sitting, a certain amount of walking and standing may be necessary.

8 ~~—~~ Severely limited: Unable to lift at least 2 pounds or unable to stand and/or walk.

9 In comparison, the Physical Functional Evaluation⁴⁷ stated:

- 10 ☐ **Light work** Able to lift 20 pounds maximum and frequently** lift or carry up to 10 pounds, able to walk or stand
11 six out of eight hours per day, and able to sit and use pushing or pulling arm or leg movements
12 most of the day.
- 13 ☒ **Sedentary work** Able to lift 10 pounds maximum and frequently** lift or carry lightweight articles. Able to walk or
14 stand only for brief periods.
- 15 ☐ **Severely limited** Unable to meet the demands of sedentary work.

16 Although both forms identify the same lifting and carrying restrictions for
17 sedentary work, the restrictions for walking and standing are different. The
18 Physical Functional Evaluation required that in order to perform sedentary work
19 Plaintiff be able to “walk or stand only for *brief* periods,” while the Medical Report
20 required that the person be able to do “a *certain amount* of walking and standing”
21 in order to perform sedentary work.⁴⁸ Dr. Raekes apparently deemed this
22 distinction important as she completed these forms on the same day, selecting
23 severely limited on the Medical Report and sedentary work on the Physical

24 ⁴⁷ AR 1373.

25 ⁴⁸ AR 1369, 1373.

1 Functional Evaluation. Given the differing sedentary-work language and that the
 2 forms were completed on the same day, the ALJ had a duty, before discounting
 3 these opinions for being contradictory, to ask Dr. Raekes to clarify her opinion.⁴⁹

4 Moreover, even if there is an inconsistency between being able to walk or
 5 stand for “brief periods” and not being able to do a “certain amount” of walking and
 6 standing, Dr. Raekes clearly opined that Plaintiff did not have the ability to walk
 7 or stand as required for a light work on either of these forms, which was either
 8 “frequent walking or standing” (Medical Report) or “walk or stand six out of eight
 9 hours per day” (Physical Functional Evaluation).⁵⁰ The ALJ crafted an RFC
 10 requiring Plaintiff to perform light work as defined by 20 C.F.R. 416.967(b), which
 11 requires Plaintiff to do “a good deal of walking or standing.” ability to walk and
 12 stand was markedly limited, which is inconsistent with the ALJ’s light-work RFC.

13 *b. Opinions are supported by the medical evidence*

14 Second, the ALJ discounted Dr. Raekes’ 2019 opinions that Plaintiff was
 15 severely limited (as defined on the Medical Report), was limited to sedentary

17 ⁴⁹ 20 C.F.R. § 404.1512.(e); *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir.
 18 2001) (“Ambiguous evidence, or the ALJ’s own finding that the record is inadequate
 19 to allow for proper evaluation of the evidence, triggers the ALJ’s duty to ‘conduct
 20 an appropriate inquiry.’”) (quoting *Smolen v. Chater*, 80 F.3d 1273, 1288 (9th Cir.
 21 1996)).

22 ⁵⁰ AR 1369, 1373.

1 exertion (as defined on the Physical Functional Evaluation), would be off-task 30%
2 of the workday, and should be restricted to occasional reaching or handling
3 bilaterally—on the grounds that these limitations were not supported by the
4 medical evidence.⁵¹ An ALJ is to consider whether an opinion is supported by the
5 medical evidence.⁵² Here, the ALJ did not explain in the paragraph pertaining to
6 Dr. Raekes’ 2019 opinions why those opinions were not supported by the medical
7 evidence, but in the next paragraph pertaining to Dr. Raekes’ 2021 opinion, the
8 ALJ highlighted certain medical evidence.⁵³ And similar to Dr. Raekes’ 2019
9 opinions, the ALJ gave little weight to Dr. Raekes’ 2021⁵⁴ opinion, including that
10 Plaintiff was severely limited, would miss at least 4 days of work per month, and
11 would be off-task and unproductive more than 30% of the workweek, because it
12 was “not consistent with the evidence.”⁵⁵

13 In the paragraph analyzing Dr. Rakes’ 2021 opinion, the ALJ mentioned
14 that the “objective evidence as to the claimant’s spine was fairly unremarkable
15 (imaging studies of the lumbar spine showed only mild degenerative findings and
16

17 ⁵¹ AR 28.

18 ⁵² 20 C.F.R. § 416.927(c)(3–4); *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d
19 1190, 1195 (9th Cir. 2004).

20 ⁵³ AR 28.

21 ⁵⁴ AR 1564–66.

22 ⁵⁵ AR 28.

1 imaging studies of the thoracic spine were normal,” the “physical exams typically
2 showed a normal gait,” “although imaging of the right hip showed a small labral
3 tear, this was surgically repaired in August 2019,” and Plaintiff was discharged
4 from physical therapy for non-compliance after her surgery.⁵⁶ The ALJ erred by
5 largely citing only to the normal findings without discussing the abnormal findings
6 in the record.⁵⁷ For instance, Plaintiff’s lumbar imaging revealed, in addition to the
7 mild degenerative disc disease, that Plaintiff had L3 and L4 limbus vertebra and
8 thoracolumbar levoscoliosis.⁵⁸ And while Plaintiff often had a normal gait, the
9 three comprehensive physical examinations performed by Dr. Baldwin, which
10 Dr. Raekes had requested, elicited lumbar and hip pain and resulting limitations.⁵⁹

11
12 ⁵⁶ AR 28.

13 ⁵⁷ The ALJ discounted Dr. Raekes’ 2019 recommendation that Plaintiff perform no
14 more than occasional reaching or handling bilaterally, as Plaintiff had not been
15 diagnosed with or treated for any impairment likely to impact the upper
16 extremities. However, the ALJ did not consider the impact of Plaintiff’s low back
17 condition on Plaintiff’s ability to reach. Nonetheless, even if substantial evidence
18 supports the ALJ’s decision to discount Dr. Raekes’ reaching or handling
19 limitations, substantial evidence fails to support the ALJ’s discounting of
20 Dr. Raekes’ other exertional and non-exertional limitations.

21 ⁵⁸ AR 1366.

22 ⁵⁹ AR 1319–23, 1337–40, 1342–45.

1 Also, during Dr. Baldwin's January 2019 examination, Plaintiff had a positive
2 straight leg raise on her right side both lying and sitting, her lumbar range of
3 motion was limited, and she had sciatic notch pressure and sacroiliac tenderness
4 on her right side.⁶⁰ Dr. Baldwin found that Plaintiff had "quite significant
5 symptoms of right lower extremity radiculopathy and that she "clearly has
6 radicular pain in her back and lower extremity."⁶¹ In addition, the ALJ failed to
7 mention that Plaintiff continued to report pain following the surgery to repair the
8 right hip labral tear. And although Plaintiff ceased post-surgery physical therapy,
9 she was upfront with this with Dr. Raekes, who noted in the treatment note, "She
10 quit physical therapy 1 month ago; 'the guy was pushing too hard and it was
11 hurting'; water therapy at Columbia Physical therapy. She does like PT there
12 named Clark and Discussed Mon-Thur; watching dogs from 10-5 p.m."⁶²

13 Another error in the ALJ's analysis of Dr. Raekes' opinions was failing to
14 discuss Plaintiff's physical impairments in conjunction with her pain, medication
15 side effects, and mental-health impairments. For instance, Dr. Raekes based her
16 opinion that Plaintiff would be unable to work on a regular and continuous basis on
17 Plaintiff's "chronic medications, severe anxiety, and untreated bipolar disorder"
18 and noted that Plaintiff's medications limit her activities due to their side effects
19

20 ⁶⁰ AR 1338.

21 ⁶¹ AR 1339.

22 ⁶² AR 1485.

1 causing her to be sedentary.⁶³ Yet, the ALJ did not discuss the impact of Plaintiff's
2 medication side-effects.⁶⁴ Likewise, Dr. Raekes explained that Plaintiff would miss
3 4 or more days per month because "she is limited by her anxiety and bipolar
4 disorder, also by her chronic pain." Similarly, Dr. Raekes supported her 2021
5 opinion with the following comment:

6 [Plaintiff] has been under psychiatric care since kindergarten when
7 diagnosed with ADHD. She did not finish high school or obtain her
8 GED due to anxiety, ADHD, currently with pain disorder, persistent
anxiety/depression and suspect bipolar disorder. Adult psychiatric
care limited, she continued to participate in counseling.⁶⁵

9
10 The ALJ's analysis of the medical evidence fails to adequately explain why
11 Dr. Raekes' medical opinion is unsupported by the medical evidence pertaining to
12 Plaintiff's physical and mental impairments and resulting pain and medication
13 side-effects.

14 Moreover, similar to Dr. Raekes' findings, each of the treating and
15 examining mental-health professionals opined that Plaintiff was at least markedly
16 limited with learning new tasks, adapting to changes in a routine work setting,

17
18 ⁶³ AR 1564.

19 ⁶⁴ See SSR 16-3p (allowing the medical source to consider medication side-effects
20 and requiring the ALJ to consider medication side-effects when assessing the
21 claimant's symptom reports).

22 ⁶⁵ AR 1566.
23

1 communicating and performing effectively in a work setting, maintaining
2 appropriate behavior in a work setting, and/or completing a normal workday and
3 workweek without interruptions from psychologically based symptoms.⁶⁶ The ALJ's
4 analysis of the medical opinions and medical evidence fails to afford meaningful
5 explanation for why the ALJ determined that the reviewing medical opinions,
6 rather than the treating or consultative opinions, were more consistent with the
7 overall medical evidence.

8 *c. Conclusion*

9 The ALJ failed to provide specific and legitimate reasons supported by
10 substantial evidence for discounting Dr. Raekes' 2019 and 2021 opinions. This
11 error was consequential as the vocational expert testified that if Plaintiff is off task
12 and unproductive more than 10% of the workday or workweek, is argumentative or
13 too disruptive in the workplace, or requires frequent reminders to do basic routine
14 tasks, she will be unable to sustain competitive employment.⁶⁷

19 ⁶⁶ AR 1374–78 (Dr. Barnard); AR 1380–83 (Dr. Burdge); AR 1282–85, 1567–70
20 (Ms. Ramirez); AR 1384–88 (Dr. Morgan). *See also* AR 58–60 (Dr. Martin finding
21 that Plaintiff's ability to interact with others was moderately to markedly limited).

22 ⁶⁷ AR 80–82.

1 3. Counselor Ramirez⁶⁸

2 Since about 2016, Plaintiff received counseling services from Ms. Ramirez.
3 Ms. Ramirez completed a Mental Residual Functional Capacity Assessment in May
4 2019 and January 2021 and provided counseling notes from their 2018–19
5 sessions.⁶⁹ Ms. Ramirez opined that Plaintiff was moderately, markedly, or
6 severely limited in her capacity to sustain the majority of the listed non-exertional
7 activities over a normal workday and workweek on an ongoing basis.

8 The ALJ gave little weight to Ms. Ramirez’ two opinions. The ALJ gave little
9 weight to the 2019 opinion on the grounds that it was unsupported by
10 Ms. Ramirez’s treatment records, which the ALJ deemed to reflect treatment for
11 mild abnormalities, such as improving sleep and communication skills and
12 addressing Plaintiff’s concern about the disability hearing, and that Plaintiff
13 routinely presented as engaged with appropriate mood.⁷⁰ As to Ms. Ramirez’s 2021
14 opinion, the ALJ discounted the opinion because it was 1) inconsistent with the
15 overall medical record, which the ALJ deemed to reflect routine mental-health
16 treatment that helped alleviate Plaintiff’s symptoms, no inpatient psychiatric
17
18
19

20 ⁶⁸ Heather Ramirez’s last name was previously Heather Shoop.

21 ⁶⁹ AR 1282–85, 1567–70, 1270–80.

22 ⁷⁰ AR 27.

1 hospitalizations, and often unremarkable mental status examinations, and 2)
 2 contradicted by Dr. Martin, who reviewed the longitudinal medical record.⁷¹

3 *a. The 2019 opinion is supported by Ms. Ramirez’s treatment notes,*
 4 *opinion comments, and letter.*

5 The ALJ discounted Ms. Ramirez’s 2019 opinion on the grounds that it was
 6 unsupported by Ms. Ramirez’s treatment records, as they reflected treatment for
 7 relatively mild abnormalities and indicated that Plaintiff “routinely presented as
 8 engaged with appropriate mood.”⁷² An ALJ may discount an opinion that is
 9 inadequately supported by medical findings and observations.⁷³ Here, the record
 10 contains Ms. Ramirez’s 2019 opinion (and 2021 opinion) and treatment summaries
 11 from January 2018 to May 2019.⁷⁴ During that time frame, Ms. Ramirez generally
 12

13 ⁷¹ AR 28.

14 ⁷² AR 27.

15 ⁷³ *Bray v. Comm’r of Soc. Sec. Admin.*, 554 F.3d 1219, 1228 (9th Cir. 2009)
 16 (recognizing that a medical opinion may be rejected if it is conclusory or
 17 inadequately supported); *Lingenfelter*, 504 F.3d at 1042 (recognizing that a medical
 18 opinion is evaluated as to the amount of relevant evidence that supports the
 19 opinion, the quality of the explanation provided in the opinion, and the consistency
 20 of the medical opinion with the record as a whole); *Crane v. Shalala*, 76 F.3d 251,
 21 253 (9th Cir. 1996).

22 ⁷⁴ AR 1270–80.
 23

1 met with Plaintiff weekly; however, Plaintiff cancelled some appointments due to
2 pain, difficulties driving, and emergencies or conflicts, or simply did not show for
3 appointments. Although the summaries indicate that Plaintiff was often engaged
4 with appropriate mood, she was also noted as being depressed, being anxious,
5 having a flat mood/affect, being angry and frustrated, and having suicidal
6 ideation.⁷⁵ Ms. Ramirez also notes that during counseling sessions they discussed
7 Plaintiff's frustrations with her family and others, her chronic pain, her continued
8 difficulties participating in work or activities she enjoyed, and her impacted sleep.

9 In her 2019 opinion, Ms. Ramirez added the following comment to explain
10 her opined limitations:

11 Julianna struggles with maintaining interpersonal relationships. Due
12 to her mental health struggles, she is unable to perform
13 work/family/social functioning long term. Julianna makes a lot of
14 progress however when triggered Julianna has a hard time controlling
15 her emotional level. Julianna can be extremely successful with
16 positive interactions and when she is able to build a strong
17 relationship with a person. This can be difficult and time consuming
18 which is unrealistic for most employers. Julianna is extremely
19 passionate and does really well with animals, however physically she
20 has been unable to perform which causes a lot of mental health
21 struggles.

22 This detailed comment and the treatment summaries adequately support
23 Ms. Ramirez's 2019 opined limitations, particularly when this treatment
information is considered alongside Ms. Ramirez's comments in 2021 after 2

⁷⁵ *Id.*

1 additional years of counseling sessions. In a detailed 2-page letter in 2021,
2 Ms. Ramirez again discusses Plaintiff's difficulties and explains that although
3 Plaintiff "has been able to make progress regarding her social interactions with
4 strangers and short interactions," "she will struggle with daily interactions with
5 people [in the work environment] causing extreme conflict especially if challenged
6 in any way."⁷⁶

7 The ALJ's finding that Ms. Ramirez's 2019 opinion was not supported by
8 Ms. Ramirez's treatment notes is not supported by substantial evidence.

9 *b. The 2021 opinion is supported by the overall medical record.*

10 The ALJ discounted Ms. Ramirez's 2021 opinion because it was inconsistent
11 with the overall medical record. Whether a medical opinion is consistent with the
12 overall medical record is a factor for the ALJ to consider.⁷⁷ The ALJ highlighted
13 that the record reflects relatively routine mental-health treatment that helped
14 alleviate Plaintiff's symptoms, that there were no inpatient psychiatric
15 hospitalizations, and often unremarkable mental-status examinations.⁷⁸ However,
16 the ALJ cherry-picked the normal mental-health findings in the record without
17
18
19

20 ⁷⁶ AR 1571–72.

21 ⁷⁷ 20 C.F.R. § 416.920c(b)(2).

22 ⁷⁸ AR 28.

1 discussing the abnormal mental-health records.⁷⁹ For instance, the ALJ failed to
2 address the information contained in Ms. Ramirez’s 2021 letter detailing that
3 Plaintiff continues to struggle with regulating her anger and requires flexibility in
4 her treatment plan as she forgets her appointments. Ms. Ramirez acknowledges
5 that Plaintiff’s need for crisis intervention has reduced but she struggles with
6 understanding and memory, making it “difficult to build routines and structure in
7 her life.”⁸⁰ And as noted above, Ms. Ramirez opined, based on her generally weekly
8 interactions with Plaintiff, that Plaintiff would struggle with daily interactions
9 with people at the workplace, particularly if she was challenged. Instead of
10 considering Plaintiff’s continued interpersonal and understanding difficulties—
11 difficulties that have persisted since Plaintiff’s youth—the ALJ merely focused on
12 the normal findings and improvement.

13 The record reflects that Plaintiff’s behavioral difficulties began as a youth
14 and continued into her young adulthood even though she has had the support of
15

17 ⁷⁹ See *Ghanim v. Colvin*, 763 F.3d 1154,1164 (9th Cir. 2014) (emphasizing that
18 treatment records must be viewed considering the overall diagnostic record);
19 *Gallant v. Heckler*, 753 F.2d 1450, 1456 (9th Cir. 1984) (disallowing the ALJ from
20 cherry picking evidence to support a conclusion that contradicts the overall
21 diagnostic record).

22 ⁸⁰ AR 1571.
23

1 her mother, a care manager, and Ms. Ramirez.⁸¹ As one example of Plaintiff's
2 behavioral difficulties, during a psychodiagnostics evaluation with Dr. Marks in
3 2017, at which Plaintiff was accompanied by her mother and a care manager,
4 Plaintiff was not cooperative, did not put forth effort, and was depressed, agitated,
5 angry, and inappropriate to such extent that Dr. Marks was unable to complete the
6 assessment.⁸² In addition, the record contains reports from welfare checks that
7 reveal Plaintiff's mental instability, including suicidal thoughts.⁸³ The ALJ
8 mentioned "some welfare checks from the local police department and some
9 intermittent outpatient counseling history" but then found that the counseling
10 history did "not reflect any acute abnormality that would warrant greater
11 accommodation than that found in the residual functional capacity."⁸⁴ This
12

13 ⁸¹ *See, e.g.*, AR 319 ("Julianna's behaviors have and do impact her ability to [be]
14 successful in the general education classroom environment."); AR 433 ("Julianna
15 struggles with expressing her thoughts and feelings appropriately when she feels
16 upset. She will either use profanity to express her thoughts and/or report that she
17 is feeling ill."); AR 487 ("She has an angry affect and is verbally hostile with even
18 her mother talking to her."); AR 492 (detailing that she will break and hit things
19 when she is upset and that she becomes frustrated easily).

20 ⁸² AR 839–42.

21 ⁸³ AR 293–306.

22 ⁸⁴ AR 26.
23

1 unexplained finding is not supported by substantial evidence. The ALJ failed to
2 meaningfully explain why evidence such as Plaintiff's continued contacts with the
3 crisis center and inappropriate behavior when being examined by Dr. Marks,
4 especially when considered along with Ms. Ramirez's counseling notes and letter,
5 fail to support Ms. Ramirez's opined non-exertional limitations.

6 c. Dr. Martin's review of the record does not serve as substantial
7 evidence to discount Ms. Ramirez's opinions.

8 Finally, the ALJ discounted Ms. Rameriz's opinion because it is contradicted
9 by the opinion of Dr. Martin, who the ALJ deemed to have reviewed the
10 longitudinal medical record. An ALJ may give more weight to an opinion that is
11 based on more record review and supporting evidence.⁸⁵ Here, Dr. Martin reviewed
12 the medical records that were available to her in June 2019; however, she did not
13 review the psychological examination report prepared by Dr. Barnard in August
14 2018. After conducting a clinical interview and a mental status examination, which
15 included memory, fund of knowledge, and concentration tests, Dr. Barnard opined
16 several marked limitations as to Plaintiff's non-exertional abilities, including that
17 Plaintiff had marked limitations with learning new tasks, adapting to changes in a
18

19 ⁸⁵ See 20 C.F.R. § 416.920c(b)(2), (c)(2); *Lingenfelter*, 504 F.3d at 1042 (recognizing
20 that the ALJ is to consider the consistency of the medical opinion with the record
21 as a whole and assess the amount of relevant evidence that supports the opinion);
22 *Andrews*, 53 F.3d at 1041 (same).

1 routine work setting, asking simple questions or requesting assistance,
2 maintaining appropriate behavior in the work setting, and completing a normal
3 workday and workweek without interruptions from psychologically based
4 symptoms.⁸⁶ Because Dr. Martin did not review Dr. Barnard's opinion, the Appeals
5 Council previously remanded this matter back to the ALJ.⁸⁷ Likewise, it was not
6 appropriate for the ALJ to discount Ms. Ramirez's opinion on the basis that
7 Dr. Martin had a more longitudinal medical record review than Ms. Ramirez.
8 Dr. Martin had not reviewed Dr. Barnard's opinion and she did not review any of
9 the records issued after her June 2019 opinion. In comparison, Ms. Ramirez's
10 opinions were based on her personal observations and interactions with Plaintiff
11 beginning since at least 2016 and continuing well after Dr. Martin testified.

12 **B. Remand for an Award of Benefits.**

13 Plaintiff submits a remand for payment of benefits is warranted. The Court
14 agrees.

15 A district court "ordinarily must remand to the agency for further
16 proceedings before directing an award of benefits."⁸⁸ The "credit-as-true" rule, on
17 which Plaintiff relies, is a "rare and prophylactic exception to the ordinary remand
18

19
20 ⁸⁶ AR 1374–78.

21 ⁸⁷ AR 144–48.

22 ⁸⁸ *Leon v. Berryhill*, 800 F.3d 1041, 1045 (9th Cir. 2017).
23

1 rule.”⁸⁹ For the Court to remand for award of benefits, three conditions must be
2 satisfied:

3 (1) the record has been fully developed and further administrative
4 proceedings would serve no useful purpose; (2) the ALJ has failed to
5 provide legally sufficient reasons for rejecting evidence, whether
6 claimant testimony or medical opinion; and (3) if the improperly
discredited evidence were credited as true, the ALJ would be required
to find the claimant disabled on remand.⁹⁰

7 Each of these elements are met. First, the record is fully developed. The
8 record contains treating and examining opinions, as well as underlying medical
9 records, that indicate when Plaintiff’s physical and mental impairments, along
10 with medication side-effects, are considered she has non-exertional limitations that
11 prevent her from sustaining full-time work. In particular, both Dr. Raekes and
12 Ms. Ramirez, who have had longstanding treatment relationships with Plaintiff,
13 opine that Plaintiff is unable to sustain fulltime work. And these treating opinions
14 are consistent with the examining mental-health opinions and the significant
15 behavioral issues observed by Dr. Marks, who determined that Plaintiff “was
16 unable to remain emotionally and behaviorally stable enough to complete the
17 assessment. It is unlikely she could hold down a job.”⁹¹ While the record contains
18 evidence of drug and alcohol use, no treating or examining medical professional
19

20 ⁸⁹ *Id.*

21 ⁹⁰ *Garrison v. Colvin*, 759 F.3d 995, 1020 (9th Cir. 2014).

22 ⁹¹ AR 843.

1 found that Plaintiff's impairments were primarily the result of a substance use
2 disorder.⁹² Likewise, the testifying medical expert did not indicate that Plaintiff's
3 impairments were primarily the result of a substance use disorder.⁹³ Further
4 administrative proceedings will not serve a useful purpose.

5 Second, the ALJ failed to provide legally sufficient reasons for rejecting the
6 medical opinions of Dr. Raekes and Ms. Ramirez.

7 Third, per the vocational expert's testimony, if Dr. Raekes' and
8 Ms. Ramirez's opinions are credited as true, Plaintiff is unable to maintain
9 competitive employment, as Dr. Raekes and Ms. Ramirez opined that Plaintiff will
10 be off task and unproductive more than 10% of the workday or workweek, be
11 absent more than 1 day a month, and/or will be argumentative and disruptive in
12 the workplace.⁹⁴

13 Accordingly, remand for a payment of benefits from January 13, 2017, the
14 date the Title 16 disability application was filed, is appropriate.

15 V. Conclusion

16 Accordingly, **IT IS HEREBY ORDERED:**

- 17 1. Plaintiff's Motion for Summary Judgment, **ECF No. 14**, is
18 **GRANTED.**

20 ⁹² AR 1373, 1377, 1383.

21 ⁹³ AR 53–66.

22 ⁹⁴ AR 80–82, 1282–85, 1370, 1566–72.

1 2. The Commissioner's Motion for Summary Judgment, **ECF No. 19**, is
2 **DENIED.**

3 3. The Clerk's Office shall enter **JUDGMENT** in favor of Plaintiff
4 **REVERSING AND REMANDING** the matter to the Commissioner
5 of Social Security for immediate calculation and award of benefits.

6 4. The case shall be **CLOSED.**

7 **IT IS SO ORDERED.** The Clerk's Office is directed to file this Order and
8 provide copies to all counsel.

9 **DATED** this 27th day of June 2022.

10 

11 _____
 EDWARD F. SHEA
 Senior United States District Judge